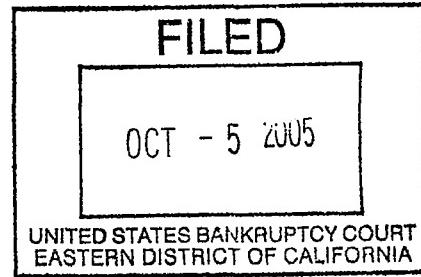


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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA

7 In re) Case No. 04-29793-C-7
8)
9 BASSEL M. BAROUDI,)
10 Debtor.)
11 TAMER MAMOU,) Adv. Proc. No. 05-02253
12 Plaintiff,)
13 v.)
14 BASSEL M. BAROUDI,)
15 Defendants.)
16

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18

**MEMORANDUM DECISION DENYING MOTION
FOR SUMMARY JUDGMENT**

19 On August 26, 2005, plaintiff filed a motion for summary
20 judgment, pursuant to Federal Rule of Civil Procedure 56 as
21 incorporated by Federal Rule of Bankruptcy Procedure 7056, in
22 which it asserted that there is no genuine issue of material fact
23 and that it is entitled to judgment as a matter of law. On
24 September 19, 2005, defendant's counsel filed a response to
25 plaintiff's motion requesting a continuance.

26 A hearing on the motion was scheduled for September 27,
27 2005. Upon review of the record, the court determined that the
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(21)

1 written record was adequate and that oral argument was not
2 necessary.

3 Plaintiff's summary judgment motion is predicated upon an
4 arbitration award rendered in his favor against defendant.
5 Plaintiff contends that the arbitration award is entitled to
6 preclusive effect under the doctrines of res judicata ("claim
7 preclusion" and "issue preclusion"). In support of his motion,
8 plaintiff submitted a copy of the arbitration award entered on
9 November 13, 2003, which states the following: plaintiff is to
10 recover \$30,000 for money fraudulently retained; \$3,500 for
11 interest to date; and \$30,000 for punitive damages

12 The court may grant a motion for summary judgment if there
13 is no genuine issue as to a material fact and the moving party is
14 entitled to judgment as a matter of law. Federal Rule of Civil
15 Procedure 56(c), as incorporated by Federal Rule of Bankruptcy
16 Procedure 7056; Anderson v. Liberty Lobby, 477 U.S. 242 (1986).

17 "Under the Full Faith and Credit Act, 28 U.S.C. § 523(a),
18 the preclusive effect of a state court judgment in a subsequent
19 bankruptcy proceeding is determined by the preclusion law of the
20 state in which the judgment was issued." Harmon v. Kobrin (In re
21 Harmon

, 250 F. 3d 1240, 1245 (9th Cir. 2001). In California,
22 issue preclusion (formerly collateral estoppel) precludes
23 relitigation of issues argued and decided in prior proceedings,
24 if certain threshold requirements are met, including: (1) the
25 issue sought to be precluded from relitigation must be identical
26 to that decided in a former proceeding; (2) this issue must have
27 been actually litigated in the former proceeding; (3) it must
28 have been necessarily decided in the former proceeding; (4) the

1 decision in the former proceeding must be final and on the
2 merits, and (5) the party against whom preclusion is sought must
3 be the same as, or in privity with, the party to the former
4 proceeding." Id.

5 Plaintiff's requests for summary judgment has at least two
6 independently fatal flaws. First, the motion and exhibits do not
7 include a copy of the complaint filed in state court. As a
8 consequence, the court cannot determine whether the issue sought
9 to be precluded from relitigation is identical to that decided in
10 a former proceeding. In re Harmon, 250 F. 3d at 1245.

11 Second, the arbitration award merely states that plaintiff
12 is to recover a certain sum for money fraudulently retained.
13 However, there are no factual findings and legal conclusions
14 concerning defendant's allegedly fraudulent actions. Therefore,
15 the court cannot determine whether or not the fraud case was
16 "actually litigated" from an arbitration award that only lists a
17 certain sum.

18 Based on the above analysis, the plaintiff has not shown
19 that there is no genuine issue of material fact regarding the
20 defendant's fraud. Accordingly, the plaintiff is not entitled to
21 judgment as a matter of law.

22 IT IS SO ORDERED.

23 Dated: October 5, 2005

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26 UNITED STATES BANKRUPTCY JUDGE
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1 **CERTIFICATE OF SERVICE**

2 On the date indicated below, I served a true and
3 correct copy(ies) of the attached document by placing said
4 copy(ies) in a postage paid envelope addressed to the person(s)
hereinafter listed and by depositing said envelope in the United
States mail or by placing said copy(ies) into an interoffice
delivery receptacle located in the Clerk's Office.

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9 Chapter 7 Trustee

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11 Carol Joyce

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13 John M. O'Donnell, Esq.

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Sacramento, CA 95815

15 Office of the United States Trustee

United States Courthouse

501 "I" Street, Suite 7-500

Sacramento, CA 95814

18 Dated:

19 10/11/05 *Rhonda Payne*

20 _____
Deputy Clerk